

En Banc

December 2001

Newsletter of the Superior Court Law Library

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Law Library News

LOISLAW is back in the library but unfortunately we are not able to once again provide remote access. You can, however, now access Hein-on-Line remotely.

When we began providing remote access to some of our databases, library cards were defaulted to an expiration date of December 31, 2001. If you should get a message that your library card has expired, please call the Information Desk at (602) 506-3945. Your card will instantly be updated so you can continue on with your research.

Superior Court Update

Did You Know?

Electronic Resources

☐ Horizon

☐ Law Library Web Page

☐ Computer Resources

The Law Library has a total of 17 computers available for public access (15 at the main branch and 2 at the

southeast branch). The desktops have been updated to include shortcuts to the in-house database links. Users will find shortcuts to the following Internet databases:

ABI Inform is a database of international business and management articles.

CCH Research Network have information on topics ranging from securities to product liabilities and safety.

Criminal Justice Abstracts contain articles that deal with crime related issues.

FirstSearch houses legal, social, business and technology databases

Hein Online is a collection of previous issues of law journals available on the web.

Internet Law and Regulation have information ranging from internet commerce to criminal liability.

LegalTrac stores a collection of legal periodicals.

Shepard's Citations stores legal citations.

Patrons are able to access websites with the Internet Explorer 6.0 or Netscape 4.75. In addition to the Internet sites, users are also able to research information stored on CD-ROM with tools such as West Legal Databases, West Mate, and UCC Search. Other research applications include LexisNexis, U. S. Treaty Index, U. N. Treaty Index and the Law Library Catalog. All applications run on Windows NT with service pack 6. Users may save documents in the

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"My Documents" folder on the desktop.

❑ Database Review

❑ Internet Site Reviews

❑ Publications of Interest on the Internet

When Men Murder Women: An Analysis of 1999 Homicide Data
<http://www.vpc.org/studies/dv4intr.htm>

The Federal Bureau of Investigation Supplementary Homicide Report states that, "handguns are the most commonly used weapons used by males to murder females." The Violence Policy Center published an annual report in 1999, "When Men Murder Women," released on Wednesday, October 17, 2001. This publication provides a national and up-to-date, state-by-state analysis of facts and statistics. The study includes detailed charts of data for the 15 states with the highest rankings. Nevada ranked number one, Alaska second, and Louisiana third. Arizona has been listed as the fourth state, with the highest incident of women murdered in the state by men was 54 homicides (2.24 rate per 100,000). The cases used to compile data for this study had been limited to those incidents that involved one female homicide victim and one male offender.

In Arizona, there were a total of 54 females that were murdered by males in 1999. Of those 54 females, 12 percent were less than 18 and 10 percent were 65 years or older. On average, the females were 37 or 38 years old. The analysis shows that 80 percent of female victims, 43 out of 54, were shot and killed with guns. The study reveals that 81 percent (35 victims) were killed with handguns. In instances when the circumstances could be identified,

90 percent of those cases showed not to be related with any other felony crime. Mostly, the homicides involved arguments between the victim and offender. Results from the study showed that women face the greatest threat of homicide from someone that they know, as their husband or intimate acquaintance. The study also found that most often, the homicides had been the result of a gun brought into a house to be used for self-defense. Firearms, especially handguns, show to be the most commonly used weapons used by males to murder females.

The Violence Policy Center conducted research with facts and statistics that were culled from The *Federal Bureau of Investigation's Uniform Crime Reporting Program* and The *Bureau of Justice Statistics Special Report* in Washington. In an attempt to come up with an analysis of intimate partner violence, they came across overwhelming numbers of homicides among females by male offenders. The majority were single victim/single offender incidents. The outcome of the study are findings for each state, broken down by what type of weapon was used, the relationship of the victim to the offender, and circumstances surrounding the incidents of murder. Overall, the homicide rate among female victims murdered by males in single victim/single offender cases in the United States was 1.35 per 100,000. Out of all the non-felony homicides, 62 percent involved arguments between the female victim and male offender, and 52 percent of those incidents involved guns. The report concludes that, when firearms are kept in a home, they are more likely to be used in unintentional death, suicide, and homicide, as opposed to being used by women trying to protect themselves. This publication can be viewed on the Internet, on the Violence Policy Center's homepage.

In the Courts

❑ Recent Arizona Cases

Arpaio v. Arizona Department of Corrections
1 CA-SA 01-0237
November 29, 2001

In a case of undisputed facts, Sheriff Arpaio has been ordered by the Arizona Court of Appeals to continue to bear the cost of transporting state inmates to civil court hearings. The sheriff unsuccessfully argued that the cost of transporting inmates, who are in the custody and control of the Department of Corrections, is the responsibility of that department.

This special action arose when the sheriff was ordered, by the trial court, to bring three DOC inmates to a civil trial.

In his argument, the sheriff cited A.R.S. §31-225, which states that "[W]hen it is necessary that a person imprisoned by the department be brought before any court, or that a person imprisoned in a county jail be brought before a court in another county, an order may be made for that purpose by the court and executed by the sheriff of the county where the order is made."

❑ From Other Jurisdictions

In re Quianna M. M.
No. 25363, 9-13-2001
2001 WL 1046974
September 13, 2001

The Wisconsin Court of Appeals has ruled that a state statute which begins gender neutral does

In 1998, Stacey A. M., an adult, gave birth to a child fathered by a twelve year old boy. She was subsequently charged with statutory rape, tried, and

sentenced to 22 years in prison. Following the conviction, the county's department of human services petitioned the court for the termination of her parental rights. The county cited its authority to bring such an action as Wisconsin Statute §48-415(9)(a), which begins; "[P]arenthood as a result of sexual assault, as a grounds for involuntary termination of parental rights applies to a mother whose child was conceived as a result of intercourse with a person who has not attained the age of sixteen..."

In her response Stacey A.M. urges the court to continue reading the statute which further states "... [C]onception as a result of sexual assault.... may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under §48-424 indicating that the father of the child committed, during a possible time of conception, a sexual assault ... against the mother of the child." It is clear, she argues, that the statute is applies to fathers and not mothers.

The appellant court found the statute to be "ambiguous" because it was one that was "capable of being understood in two or more different ways by well-informed persons." Such ambiguities require the court to examine the legislative intent of a law before such disputes can be settled. The goal of researching a statute's legislative history is to "discern and give effect to the intent of the legislature." Reading of bills, companion bills, records, memos, and notes is necessary to determine which interpretation was the one more likely intended by the legislature.

After careful examination of the house and senate bill files, the court found "compelling evidence that both bodies intended to apply Wis. Stat. §48-415(9) to fathers only."

New in the Library

□ Book Reviews

Fascinating, isn't it? All those books, just waiting to be picked up, opened and...oh, hi! You don't have a clue what I'm talking about, do you? Come with me for a moment. Over to the northwest side of the second floor. East court building, please. The four stacks of shelves. On the other side of the Arizona collection. You know the ones. Well, maybe you don't. That could be the problem. Have you ever just wondered through the rows of books over there, stopping to peruse the titles every now and again. No, don't suppose you have. Let me guess, you're too busy. You come in here with a stated purpose and that's all you do. Sigh. No wonder your blood pressure is so high. Go on. Take a look. It's truly fascinating the things you can discover over there. Books on real estate appraisals and water issues (boring!). Books on laws of various countries, like Mexico (do you read Spanish, per chance?), Australia, China. Papers of various presidents of the United States - those are pretty good. So, I'm down there, wandering the stacks, looking for a book to review (as you can see, I haven't found one yet) for this column. It's not easy picking out just the right book, you know! It's hard. First of all, it has to catch my attention - so the title better be interesting. And the subject matter better not be boring, either! No real estate appraisal reviews, sorry. Finally, I better be in the mood to write the review! Which means that Susan asked me to write a review about a week ago and I haven't done it yet! Poor Susan! So this time, I found several books. But I can't write about each of them - it would take up too much room and I still have a lot of other work to do. But I found so many fascinating books down there in that section of the library! For example, I found this book by Ron N. Morris called *Forensic Handwriting Identification: Fundamental Concepts and Principles* (HV8074 .M67 2000). Someone has actually checked this book out (it had a due-date slip in it)! Its not a very large book. But the idea

of it is fascinating. To think that so much information could be gleaned from my handwriting....ok, that's scary. Maybe this isn't such a good idea. Let's move on. Here's a good one: *Serial Murder, 2nd ed.* By Ronald and Stephen Holmes (HV6529 .H65 1998). This book looks at, what else, murder in America, but specifically serial murders. How extensive is the problem? Did you know there are different types of murder, with corresponding characteristics? The Holmes' look at different types of serial murderers throughout history. What their motives were, how they fit into a certain pattern, and what the ending of their cases were. Truly interesting! No? Ok, fine. Maybe I'm just a little more warped than the rest of you! It's ok! I can take it. How about this one: *Forensic DNA Typing* by John M. Butler (RA1057.55 .B88 2000)? It could be good! Then again, I never was much for science and biology and such. It tended to bore me. Oh, nucleotides! Yick! Never mind. How about this one: *Law and Literature* by Richard A. Posner (PN56.L33 P67 1998)? I took a class in law school on law and literature. Good class, even if I did end up dropping it! Who amongst you hasn't read John Grisham? Or Mark Twain? Bet you never thought of Charles Dickens as a legal novelist, did you? Many books throughout literary history, and now, have roots in the law. That was the premise of the class, and this book. Take a book, read it, and figure out how the law fits into it's context. Some books (like *The Firm* by John Grisham) are much easier to figure out than others. Maybe that's why I dropped the class!

Well, I've run out of time and space. Do you see where I'm going with this one? Me either! I was hoping you did. Seriously though, it's fun to see what other books are available in the library besides the Arizona Revised Statutes. Give it a go sometime. Your blood pressure will thank you!

□ Article Reviews

Bohr, Gail Chang. "Children's Access to Justice." 28 William

Mitchell Law Review 229 (2001).

When a case involves a child, it is assumed that the child has representation and a voice in the proceedings, but this is not always the case. Representation should not just be a gesture or formality because proper representation is the very "essence of justice." Two notable cases that illustrate this need are *In re Gault* and *Kent v United States*. Children must be represented by counsel especially in proceedings that can result in their being incarcerated or deprived of their person liberty.

Minnesota is one of the few states that had given the "minor, guardian, or custodian the right to counsel." Because they already had this in their laws, it was not necessary for them to adopt the Uniform Juvenile Court Act of 1968 that was approved by the American Bar Association.

Juvenile protection proceedings are civil proceedings where the state or county is the petitioner and the parent is the respondent. Since the child has an interest in the outcome of the case, it is imperative that the child be represented by their own counsel who is there to make sure the child's right are upheld. This counsel should not be the guardian ad litem. In 2000, the statute was amended to limit the right of counsel to children ten years of age and older. This amendment caused systematic impediments because many children did not get a lawyer or had a different lawyer for each proceeding which made continuity a problem.

"In 1998, there were 18,854 children in out of home placements in Minnesota." Except for a few non-profit organizations, children were provided with counsel from the public defender system. Since this system is primarily geared to criminal cases, there were many children who went without any representation at all. Because of this a child's right to counsel was

compromised in juvenile court and family court matters. Additionally, it is up to the judge's discretion as to whether a child is heard from at all in court, and because of this a child's access to justice is diminished.

March 1, 2000, Minnesota created a new amendment which created the Juvenile Protection Rules. These rules provide that the child is a "participant" not a "party. A "party" is entitled to receive notice, have legal representation, be present at all hearings, conduct discovery, bring motions, participate in settlement agreements, and otherwise participate in the action. The rights of a "participant" are limited to receiving notice, attending hearings, and offering information only if the court is willing to let them. This new rule was created so that individuals who do not have a direct connection to the child can be included in the proceedings as parties rather than participants, but it is inconsistent with other relevant statutes. For example, it limits the child's right to inspect records in cases where the child is not considered a party to the proceeding. Also, it does not allow the child to testify outside the court setting even when it is in the child's best interests. Thus, the child may not be able to use the very law enacted for their benefit.

The child's lawyer cannot fulfill their responsibilities and duties laid down by the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, unless he is able to truly act as the child's attorney. The "child's attorney" means a lawyer who provides legal services to a child and owes the same duties to that child as he would an adult client which include: getting copies of all pleadings and notices, participating in depositions, negotiations, discovery, pretrial conferences, and hearings and developing a theory and strategy of the case. Thus the lawyer must not be merely a factfinder but rather a zealous advocate on the child's behalf. After the hearing, it is the attorney's duty to review all written orders to make sure that they conform with the court's verbal orders and

findings. Also, the outcome of the hearing must be discussed and the consequences explained to the child in language that the child is able to understand.

In conclusion, "high quality representation," as provided by the *ABA Standards*, is imperative. "Without such representation, the child's access to justice is an empty promise."

Yarbrough, Stephanie Leonard.
"The Jury Consultant - Friend or
Foe of Justice." 54 SMU Law
Review 1885 (Special Issue, 2001).

The services of jury consultants are becoming more and more in demand. Consultants know that each juror is unique in background, age, education, race, gender, religion, and socioeconomic status. Group dynamics shape a jury's opinion and identifying the "leader" of the group is important since this person can sway the jury in many directions. In an ideal world, a jury would be unbiased, fair, and sensitive to the issues but this can not always be relied upon.

High profile cases, such as the O.J. Simpson murder trial, use jury consultants to gauge the public's reaction to the case and the defendant. Use of social scientist is routine in these matters. Their services do not come cheaply which becomes a deciding factor in whether or not to use a consultant. The fact that damage awards are becoming higher and higher is one big reason that jury consultants have become so popular. In deciding to use a consultant, one should ask: how likely is it that damages will be awarded; will this damage amount be high; how much time is there for trial preparation; and can the client afford one? Traditionally, the role of the jury consultant was to assist in voir dire, but this has changed dramatically.

Generally, services provided by the jury consultants are last minute advice, mock trials, focus groups, jury selections, opening statement consultation, community attitude

surveys, damage award assessment, and jury instruction review. Focus groups can identify initial impressions of the case and can also clear up any "bad facts" that may have been portrayed by the media. Mock trials are the most popular instruments as they give a general demographic composition to the potential jury pool. Videotapes of these trials can reveal information that is compelling and also information that is troublesome to the jury to understand and evaluate. Other things to be considered are design of exhibits, video production, and development of computer animation. All visual aids should and must be tested to ensure that they are clear and not misleading. Sometimes points brought up by the attorney are unclear and can be better demonstrated by a visual aid. Community attitude surveys of at least 300-500 residents of a community has the highest level of "predictive validity" and is a very powerful tool for use in a settlement and at trial.

Consultants can also be used for witness preparation. Well prepared, properly directed witnesses will leave nothing left to chance. It is not proper for them to "instruct" the witness, but rather they can aid in streamlining the witness' testimony. Videotaping to prepare a witness will show weaknesses in their testimony, relieve tensions about the trial setting, and make them more comfortable with the type of questions that they will be asked.

Prospective juror questionnaires are a traditional method of performing voir dire. Even though this is a valuable tool, it is restrictive in that it does not get probing or in-depth information about the individual juror's psychological make-up. "The most important questions are perhaps the broad, open-ended inquiries," because it is here that the attorney and consultant will get insight into the individual's belief system. The judge instructs the jurors on how to

answer the questionnaire. The key demographic factors include: the individual's politics, nationality, business, social standing, friends, habits, and the books and newspapers he or she reads. All of these combine together to create the "ideal juror."

Even though jury consultants are no doubt very useful, there is still an element of unpredictability that exists. Also, there are some discriminatory implications when you "hand-pick" jurors. A jury is supposed to be a group of one's peers, yet how can this be if these jurors are selected by a "hired gun?" Additionally, a defendant with lots of money at their disposal has an unfair advantage over those defendants that can not afford this person. Many jury consultants do donate their time to counteract this advantage of the wealthy. The consultant must also guard against preparing a show trial or to unethically coach a witness.

Jury consultants first became popular in the 1970's, and in 1982, when the American Society of Trial Consultants was founded, there were fifteen consultants practicing in the United States. Today, there membership is consists of 350 members. Advances in technology and on-line research have increased the efficiency, convenience and accuracy of jury research. Surrogate jurors can easily be obtained via the Internet which can cut down on costs.

Attorneys have a responsibility to ensure that jury consultants are used in a professional manner. On the other hand, judges are not charged with ensuring that attorneys and consultants working on a case, conduct themselves in an ethical manner. In the past, jury consultants were called on just shortly before the trial, but now they play an integral role in the entire trial, yet their focus should still remain on the pretrial preparation. Consultants know that jurors are complex individuals. Bottom line, the "ideal" juror is a person who is sensitive to the issues, and who cares about the good of the accused

individual and the good of society.

❑ Recently Received Books

❑ Recent Articles:

❑ "Did You Know?" Answers

Contributors

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